

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

FILED

APR 08 2020

Clerk, U S District Court  
District Of Montana  
Billings

**DYLAN PATRICK CURTIN,**

**Plaintiff,**

**vs.**

**LYNN GUYER; ATTORNEY  
GENERAL OF THE STATE OF  
MONTANA,**

**Defendants.**

**CV 19-135-BLG-SPW**

**ORDER ADOPTING  
MAGISTRATE'S FINDINGS  
AND  
RECOMMENDATIONS**

The United States Magistrate Judge filed Findings and Recommendations on February 18, 2020. (Doc. 8.) The Magistrate recommended denying Curtin's habeas petition without prejudice. (Doc. 8 at 5.)

Pursuant to 28 U.S.C. § 636(b)(1), parties are required to file written objections within 14 days of the filing of the Magistrate's Findings and Recommendations. No objections were filed. When neither party objects, this Court reviews the Magistrate's Findings and Recommendation for clear error.

*McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

After reviewing the Findings and Recommendations, the Court does not find that the Magistrate committed clear error. Curtin failed to exhaust his state court remedies before filing the instant petition. *See* 28 U.S.C. § 2254(b)(1)(A). Moreover, Curtin has not made a “substantial showing of the denial of a constitutional right,” 28 U.S.C. § 2253(c)(2), and reasonable jurists would find no basis to encourage further proceedings, *Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012). Accordingly,

**IT IS ORDERED** that the proposed Findings and Recommendations entered by the United States Magistrate Judge (Doc. 8) are **ADOPTED IN FULL**.

**IT IS FURTHER ORDERED:**

1. Curtin’s Petition (Doc. 1) is **DISMISSED** without prejudice as unexhausted.
2. The Clerk of Court is directed to enter judgment of dismissal.
3. A certificate of appealability is **DENIED**.

DATED this 7<sup>th</sup> day of April, 2020.

  
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SUSAN P. WATTERS  
United States District Judge